

1 BEFORE THE BOARD OF PERSONNEL APPEALS

2 LOCAL 521 I.A.F.F.,) ULP-3-1976

3 Complainant,) FINDINGS OF FACT,
4 vs-) CONCLUSIONS OF LAW AND
RECOMMENDED ORDER.

5 CITY OF BILLINGS)

6 Defendant.)

7 * * * * *

8 On January 27, 1976, Complainant, Local 521, International Association
9 of Fire Fighters (Union), filed an unfair labor practice charge against the
10 Defendant, City of Billings (City), alleging that the City had failed to
11 bargain in good faith and has therefore committed an unfair labor practice as
12 defined in 53-1603 (3)(e). Specifically, the Union alleges that the City, by
13 failing to engage in the grievance procedure as outlined in the agreement
14 between the parties, is guilty of refusing to bargain in good faith.

15 A hearing was held in Billings, Montana, on April 22, 1976, and briefs
16 were submitted on the matter on May 5, 1976. From the hearing the following
17 are my findings of fact:

18 1. Local 521 I.A.F.F. is the bargaining representative for the fire department
19 except the chief and assistant chief.

20 2. An agreement exists between the City and the Union which was in effect
21 at the time of the alleged grievance.

22 3. Article XVII of that Agreement establishes a grievance and arbitration
23 procedure.

24 4. Captains Dieder, Larnce, La Motte, Prink, Danjansovich and Dillon
25 instituted the first step of the grievance procedure by reporting their
26 grievance to the shop steward, Pat Schmaing.

27 5. On November 21, 1975, Pat Schmaing, reported the grievance to Chief
28 Wallace W. Prinkle.

29 6. Chief Prinkle stated in a letter that he was unable to resolve the
30 problem and suggested that the grievance be carried to the next step, the
31 Grievance Committee Chairman for further action.

32

1 7. The Chairman of the Grievance Committee, Robert Dozier, presented
2 the grievance to G. Brent Hunter, Director of the Department of Personnel and
3 Safety.

4 8. On November 29, 1975, Mr. Hunter in a letter addressed to Mr. Dozier,
5 denied the grievance, recommending the individual captains take the matter
6 back to the Classification Appeals Committee.

7 9. In a letter dated December 3, 1975, Mr. Dozier requested the matter
8 be submitted for arbitration.

9 10. On December 9, 1975, Mr. Hunter submitted Mr. Bill Anderson's name
10 as a suggested arbitrator.

11 11. A letter dated December 10, 1975, was sent to Mr. Anderson by Mr.
12 Dozier requesting on behalf of the Union and the City that he serve as the
13 arbitrator.

14 12. On December 31, 1975, Mr. Hunter sent Mr. Dozier a letter stating
15 that an agreed date for the hearing before the arbitrator was January 22,
16 1976.

17 13. A letter noting that confirmation of the January 22 date was sent
18 to the arbitrator by Mr. Hunter.

19 14. On January 13, 1976, Mr. Hunter sent a letter to Mr. Dozier stating
20 that the City has decided to forego the pending arbitration hearing asserting
21 that the issue of the grievance was outside the realm of a valid grievance.

22 15. On January 15, 1976, in a letter addressed to the arbitrator Mr.
23 Dozier informed the arbitrator that even though the City had abandoned the
24 pending arbitration, that the Union planned on being present at the January
25 22 hearing date.

26 16. On January 17, 1976, the arbitrator wrote a letter addressed to
27 both parties, withdrawing as arbitrator in order to avoid being caught in the
28 middle.

29 17. On January 20, 1976, Mr. Dozier wrote Mr. Hunter requesting the
30 City's cooperation in selecting a new arbitrator to replace Mr. Anderson.

31 18. Mr. Hunter replied on January 22, 1976, that the City did not

1 want to take the matter to arbitration.
2

3 DISCUSSION

4 The Union asserts that the City is guilty of an unfair labor practice
5 by failing to bargain in good faith in violation of 59-1605 (1)(e). The
6 charge is a result of the City's refusal to proceed with the arbitration of
7 the grievance.

8 The City's argument is that Classification is a management right citing
9 59-1603(2)(e):

10 "(2) Public employees and their representatives shall recognize
11 the prerogatives of public employers to operate and manage their
12 affairs in such areas but not limited to:
(e) determine the methods, means, job classifications, and personnel
by which government operations are to be conducted."

13 The City argues that management rights are not subject to grievance
14 procedure.

15 The Union in its argument relies heavily on this Board's previous order,
16 International Brotherhood of Painters and Allied Trades, Local No. 1023 vs
17 Montana State University and Barry Bjort. The City contends, however, that
18 that decision is not applicable here because it did not decide the issue of
19 management rights.

20 The issue therefore presented at this hearing is may an employer refuse
21 to arbitrate a matter on the grounds that the subject matter of the grievance
22 concerns management rights.

23 In the Collective Bargaining Act for Public Employees, the Legislature
24 stated the policy of the state of Montana:

25 59-1601 Policy: In order to promote public business by removing
26 certain recognized sources of strife and unrest, it is the policy
27 of the state of Montana to encourage the practice and procedure of
collective bargaining to arrive at friendly adjustment of all disputes
28 between public employers and their employees. (emphasis added)

29 Section 59-1610(2) states:

30 "2. An agreement may contain a grievance procedure culminating in
31 final and binding arbitration of unresolved grievances and disputed
interpretations of agreements."

32 A grievance procedure which culminates in final and binding arbitration
is one mechanism in collective bargaining which allows employers and employees

1 to arrive at friendly adjustment of all disputes. This is in agreement with
2 the policy established by the legislature, and it is essential that this Board
3 encourage the enforcement of those contractual provisions wherever possible.

4 In the Painter's decision our order reads:

5 It is not within the jurisdiction of the Board, to decide whether
6 grievances are suitable for submission to contractual grievance
7 procedures. Nor is it the right of management or labor to resolve
8 disputes of the contract by ignoring them. The only party which
9 can initiate or withdraw a grievance is the aggrieved party, if
10 the grievance procedure is to be utilized at all.

11 ...Reiterating, it is not within the jurisdiction of the Board
12 to rule on the merits of the grievance in question. Whether
13 or not the unilateral action of permitting students to paint
14 their own rooms is justified or not under the existing contract
15 is not the question here. What is in question however, is did
16 the employer by refusing to take part in the "contractual mechanism"
17 for the ongoing process of collective bargaining, refuse to
18 bargain in good faith? The answer to this question is in the
19 affirmative."

20 The defense of the City that classification is a management right and
21 therefore not subject to the grievance procedure is not well taken here. Step
22 III of the grievance procedure as set out in the Agreement between both parties
23 states:

24 "...The arbitrator's decision shall be final and binding on both parties,
25 but he shall have no power to alter in any way the terms of the Agreement,
26 City Ordinance, State law, or Federal Law...." (emphasis added)

27 Under terms of the agreement, an arbitrator could not alter state law.
28 If the grievance deals with a matter left exclusively to the prerogative of an
29 employer as in 59-1603(2)(e) as alleged by the City, then the arbitrator must
30 take cognizance of that fact and his decision must reflect that fact. The
31 City is protected in that it has redress through the district court if the
32 arbitrator's order is issued contrary to the agreement.

33 It is granted that this Hearing Examiner could conduct a long, drawn-out
34 hearing to decide if the grievance concerns a management right. That, however,
35 would provide for expensive duplication of hearings and take the matter outside
36 the contractual agreement between the parties which was established to allow
37 the parties "to arrive at a friendly adjustment of all disputes between public
38 employers and their employees." In turn, that would result in a circumvention
39 of the intent of the Legislature.

To reiterate, this Board must encourage and support Agreements which provide the necessary mechanisms to reach friendly adjustments of disputes. The grievance procedure providing for binding arbitration does just that in this fact situation. The city's rights are sufficiently protected in the grievance procedure and were obviously intended to be protected by the phrase stating the arbitration cannot alter state laws. Therefore, the only conclusion that I can reach is that the City incorrectly refused to proceed with the arbitration in question as requested by the Union.

A second issue was injected into this hearing by the City in its brief. The City alleges that the grievance in question was filed after the 3-day limit set by the grievance procedure. We find no merit to that argument. A grievance concerning salary is a continuing grievance, and each day the captains are not properly placed on the classifications matrix would in essence constitute a new grievance. Therefore, the captains could choose any one of those days as the subject of their grievance.

CONCLUSION

1. The City has failed to bargain in good faith as required in 50-160, and is therefore guilty of an unfair labor practice as defined in 50-160(1)(e).
2. The grievance in question complies with the 3-day requirement of the grievance procedure.

ORDER

The City shall proceed with the arbitration as called for in Article XVII of the agreement between the City and the Union; and a report shall be made to the Executive Secretary of this Board by the City of what steps are being implemented to comply with this Order.

Dated this 28th day of May, 1976.

Jerry L. Painter
Jerry L. Painter
Hearing Examiner